



House of Representatives

General Assembly

File No. 638

January Session, 2017

Substitute House Bill No. 7256

House of Representatives, April 18, 2017

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO CERTAIN CRIMINAL JUSTICE STATUTES AND THE REPORTING OF THE DEATH OF ANY PERSON IN STATE CUSTODY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2017*) Each department head, as
2 defined in section 4-5 of the general statutes, including the
3 Commissioner of Education, and the Chief Justice of the Supreme
4 Court shall promptly notify the Division of Criminal Justice of any
5 death of a person in the care, custody or control of any person or entity
6 under the jurisdiction of such department head or the Chief Justice.

7 Sec. 2. Subsection (b) of section 53a-70c of the general statutes is
8 repealed and the following is substituted in lieu thereof (*Effective*
9 *October 1, 2017*):

10 (b) Aggravated sexual assault of a minor is a class A felony and any
11 person found guilty under this section shall, for a first offense, be
12 sentenced to a term of imprisonment, [of] twenty-five years of which

13 may not be suspended or reduced by the court and, for any subsequent
14 offense, be sentenced to a term of imprisonment of fifty years which
15 may not be suspended or reduced by the court.

16 Sec. 3. Subsection (c) of section 53a-167c of the general statutes is
17 repealed and the following is substituted in lieu thereof (*Effective*
18 *October 1, 2017*):

19 (c) In any prosecution under this section involving assault of a
20 health care employee, as defined in section 19a-490q, it shall be [a] an
21 affirmative defense that the defendant is a person with a disability as
22 described in subdivision (13), (15) or (20) of section 46a-51 and the
23 defendant's conduct was a clear and direct manifestation of the
24 disability, except that for the purposes of this subsection, "mental
25 disability", as defined in subdivision (20) of section 46a-51, does not
26 include any abnormality manifested only by repeated criminal or
27 antisocial conduct.

28 Sec. 4. Subsections (d) and (e) of section 54-47aa of the general
29 statutes are repealed and the following is substituted in lieu thereof
30 (*Effective October 1, 2017*):

31 (d) [A] Whenever an order is issued pursuant to subsection (b) of
32 this section, a telecommunications carrier shall disclose to the
33 appropriate law enforcement official call-identifying information or
34 the content of a subscriber's or customer's communications or geo-
35 location data, and a provider of electronic communication service or
36 remote computing service shall disclose to the appropriate law
37 enforcement official basic subscriber information [to a law enforcement
38 official when an order is issued pursuant to subsection (b) of this
39 section] or the content of a subscriber's or customer's communications
40 or geo-location data, as directed by the order.

41 (e) Not later than forty-eight hours after the issuance of an order
42 pursuant to subsection (b) of this section, the law enforcement official
43 shall mail notice of the issuance of such order to the subscriber or
44 customer whose call-identifying information, communications data or

45 geo-location data or basic subscriber information is the subject of such
46 order, except that such notification may be delayed for a period of up
47 to ninety days upon the execution of a written certification of such
48 official to the judge who authorized the order that there is reason to
49 believe that notification of the existence of the order may result in (1)
50 endangering the life or physical safety of an individual, (2) flight from
51 prosecution, (3) destruction of or tampering with evidence, (4)
52 intimidation of potential witnesses, or (5) otherwise seriously
53 jeopardizing the investigation. The law enforcement official shall
54 maintain a true copy of such certification. During such ninety-day
55 period, the law enforcement official may request the court to extend
56 such period of delayed notification. Such period may be extended
57 beyond ninety days only upon approval of the court. The applicant
58 shall file a copy of the notice with the clerk of the court [that issued
59 such order] for the geographical area within which any person who
60 may be arrested in connection with or subsequent to the execution of
61 the order would be presented, and such notice shall include the case
62 number assigned to such investigation pursuant to subsection (b) of
63 this section. If information is provided in response to the order, the
64 applicant shall, not later than ten days after receiving such
65 information, file with the clerk a return containing an inventory of the
66 information received. Such return and inventory shall include the case
67 number assigned to such investigation pursuant to subsection (b) of
68 this section, and such return and inventory shall remain sealed until
69 the copy of the notice is filed with the clerk pursuant to this section. If
70 a judge finds there is a significant likelihood that such notification
71 would seriously jeopardize the investigation and issues an order
72 authorizing delayed notification under this subsection, the
73 telecommunications carrier or provider of electronic communication
74 service or remote computing service from whom the call-identifying
75 information, communications data, geo-location data or basic
76 subscriber information is sought shall not notify any person, other than
77 legal counsel for the telecommunications carrier or provider of
78 electronic communication service or remote computing service and the
79 law enforcement official that requested the ex parte order, of the

80 existence of the ex parte order. Any information provided in response
81 to the court order shall be disclosed to the defense counsel.

82 Sec. 5. Subsection (f) of section 54-142a of the general statutes is
83 repealed and the following is substituted in lieu thereof (*Effective*
84 *October 1, 2017*):

85 (f) Upon motion properly brought, the court or a judge [thereof] of
86 such court, if such court is not in session, [may] shall order disclosure
87 of such records (1) to a defendant in an action for false arrest arising
88 out of the proceedings so erased, or (2) to the prosecuting attorney and
89 defense counsel in connection with any perjury charges which the
90 prosecutor alleges may have arisen from the testimony elicited during
91 the trial, or any false statement charges, or any proceeding held
92 pursuant to section 53a-40b, or (3) counsel for the petitioner and the
93 respondent in connection with any habeas corpus or other collateral
94 civil action in which evidence pertaining to a nolle or dismissed
95 criminal charge may become relevant. Such disclosure of such records
96 is subject also to any records destruction program pursuant to which
97 the records may have been destroyed. The jury charge in connection
98 with erased offenses may be ordered by the judge for use by the
99 judiciary, provided the names of the accused and the witnesses are
100 omitted therefrom.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2017</i>	New section
Sec. 2	<i>October 1, 2017</i>	53a-70c(b)
Sec. 3	<i>October 1, 2017</i>	53a-167c(c)
Sec. 4	<i>October 1, 2017</i>	54-47aa(d) and (e)
Sec. 5	<i>October 1, 2017</i>	54-142a(f)

Statement of Legislative Commissioners:

In Section 1, "The" was changed to "Each" to conform with drafting conventions, Sec. 3(c) was clarified and in Sec. 4, Subsec. (d) was clarified and references were added to communications data or geo-

location data throughout. In Section 5, "of chapter 952" was deleted for proper form.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes various changes to criminal justice statutes that do not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 7256*****AN ACT CONCERNING REVISIONS TO CERTAIN CRIMINAL JUSTICE STATUTES AND THE REPORTING OF THE DEATH OF ANY PERSON IN STATE CUSTODY.*****SUMMARY**

This bill makes various changes to criminal laws, including:

1. clarifying that the maximum prison term for a first conviction of aggravated sexual assault of a minor is 50 years;
2. making it an affirmative defense, rather than a standard defense, that an assault of a health care employee was a direct manifestation of the defendant's disability;
3. prohibiting this defense for individuals with a disability manifested only by repeated criminality or antisocial conduct;
4. changing certain procedures concerning court filings after law enforcement officials are granted ex parte court orders compelling disclosure of cell phone and internet records; and
5. expanding the circumstances in which courts must disclose erased criminal records, including requiring disclosure to counsel in habeas proceedings if evidence of erased charges may become relevant.

The bill also requires any executive branch department head and the state Supreme Court's chief justice to promptly notify the Division of Criminal Justice if someone dies while in the care, custody, or control of anyone under the department head's or chief justice's jurisdiction (§ 1).

EFFECTIVE DATE: October 1, 2017

§ 2 — AGGRAVATED SEXUAL ASSAULT OF A MINOR

The bill clarifies that the maximum prison term for a first conviction of aggravated sexual assault of a minor is 50 years.

Under current law, the statute defining the offense provides that someone convicted of this crime must be sentenced to a 25-year mandatory prison term for a first offense. Another law provides that this crime is punishable by a prison term of 25 years to 50 years (CGS § 53a-35(a)(3)). The bill amends the law defining the offense to specify that the 25-year term is a mandatory minimum, and thus the maximum sentence can be up to 50 years.

Under existing law, unchanged by the bill, there is a mandatory 50-year prison term for a subsequent offense.

§ 3 — ASSAULT OF A HEALTH CARE EMPLOYEE

Under existing law, assault of a health care employee is a class C felony, punishable by up to 10 years in prison, a fine of up to \$10,000, or both. Current law allows a defendant to claim as a defense that he or she has a mental, physical, or intellectual disability and the conduct was a clear and direct manifestation of the disability.

The bill makes two changes to these provisions. First, it provides that the defense is an affirmative defense. By law, a defendant has the burden of establishing an affirmative defense by a preponderance of the evidence, while the state has the burden of disproving other defenses beyond a reasonable doubt (CGS § 53a-12).

Second, under the bill, an abnormality manifested only by repeated criminal or antisocial conduct is not a qualifying mental disability for purposes of this defense.

§ 4 — COMPELLED DISCLOSURE OF CELL PHONE AND INTERNET RECORDS

Under existing law, law enforcement officials can apply for ex parte court orders (i.e., orders issued without a hearing or prior notice to a customer) to compel telecommunications carriers and internet

providers to disclose certain information about their customers' accounts or activities, for use in criminal investigations. Judges can grant these orders under specified standards (see BACKGROUND).

By law, after the court issues such an order, the law enforcement official must mail notice of the order within 48 hours to the person whose records were sought, unless the official requests a 90-day delay for certain reasons (e.g., notification would endanger someone's safety).

Current law requires the official to file a copy of the notice with the court that issued the order. The bill instead requires the official to file the notice with the court where anyone who could be arrested in relation to the order would be presented. It also requires the notice to include the case number assigned to the investigation.

Under existing law, if the official who requested the order receives information in response to it, he or she must file a return with the court within 10 days, including an inventory of the information received. The bill requires the return and inventory to (1) include the case number and (2) remain sealed until the notice is filed.

The bill also makes technical changes to conform to changes made in PA 16-148, clarifying that the notice provisions and other requirements apply to communications data and geo-location data as set forth in that act.

§ 5 — DISCLOSURE OF ERASED CRIMINAL RECORDS

The bill requires the court to disclose erased criminal records to:

1. the petitioner's and respondent's attorneys in connection with any habeas corpus proceeding or other collateral civil action in which evidence about a nolle or dismissed criminal charge may become relevant (see BACKGROUND, *Related Case*), and
2. the prosecutor and defense counsel in connection with (a) false statement charges or (b) proceedings on sentence enhancement

for an offense committed while the person was on release (e.g., by someone who posted bail).

The bill also requires, rather than allows, the court to disclose erased records to:

1. a defendant in an action for false arrest arising out of the erased proceeding and
2. the prosecutor and defense counsel when the records are connected to a perjury charge that the prosecutor alleges to have arisen from testimony at trial.

BACKGROUND

Compelled Disclosure of Cell Phone and Internet Records

By law, law enforcement officials can apply for ex parte court orders to compel:

1. telecommunications carriers to disclose a customer's call-identifying information;
2. electronic communication or remote computing service providers to disclose basic subscriber information; and
3. any such companies to disclose a communication's contents or geo-location data associated with call-identifying information.

The standard to grant these orders is (1) reasonable and articulable suspicion of a crime, to compel disclosure of call-identifying or basic subscriber information, and (2) probable cause, to compel disclosure of a communication's contents or geo-location data (CGS § 54-47aa).

Erased Criminal Records

The law requires the erasure of police, prosecutorial, and court records when a person:

1. is found not guilty or has his or her charges dismissed and the period to file an appeal expires or an appeal upholds the

determination;

2. has a charge nolle and 13 months pass;
3. makes a motion for a nolle, if the charge was continued at the prosecutor's request and there has been no prosecution or disposition for 13 months; or
4. receives a pardon.

The person charged is deemed to have never been arrested for the erased charges (CGS § 54-142a).

Related Case

In *State v. Apt* (319 Conn. 494 (2015)), the Connecticut Supreme Court considered the case of a defendant who was arrested for committing a crime, released on bond, and later arrested and convicted of another crime. On the later crime, the state sought to enhance the defendant's sentence because the later crime was committed while the defendant was released on bond for the original charge (see CGS § 53a-40b). Before the hearing on the sentence enhancement, the original charge on which he was released on bond was dismissed and the records of it erased.

The court ruled that the state could not use the erased records to prove that the defendant was on release when he committed the later crime and therefore eligible for the sentence enhancement. But the court also ruled that the state could seek to prove eligibility for the sentence enhancement using other evidence.

Related Bill

sHB 7291, reported favorably by the Judiciary Committee, sets conditions for law enforcement officials to install and use a cell site simulator device to obtain geo-location data related to a criminal investigation. Specifically, it allows them to do so for up to (1) 48 hours without a court order in exigent circumstances and (2) two weeks under an ex parte court order issued under a probable cause standard.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (03/29/2017)